

Whalen, Marilyn

From: Paula Dinerstein <pdinerstein@peer.org>
Sent: Tuesday, August 12, 2014 11:31 AM
To: Blumenfeld, Jared
Subject: FW: PEER correspondence with Region 9 EPA

Dear Administrator Blumenfeld:

After I asked for an opportunity for a short conversation with you, the following correspondence ensued, in chronological order from the bottom up. I had wanted to have a private conversation, but that was not possible. I hope that nevertheless our comments on behalf of Malibu teachers will be considered.

Thank you. – Paula Dinerstein, PEER

Kelly:

I am disappointed that EPA Region 9 is now unwilling to dialogue with affected communities on this matter. As you may know, PEER is the advocate for the Concerned Malibu/Cabrillo Teachers, consisting of 29 teachers and staff at Malibu Middle and High School and Juan Cabrillo Elementary School, and we submit these comments on their behalf.

We understand that EPA is in negotiations with the district to come to some sort of agreement about PCB testing and remediation at the Malibu schools. I think it is unfortunate that this is being done behind closed doors out of the public view. Moreover, the District has also adopted a one-way route of communication. setting up an email address to communicate with their consultant, Environ. (They are not taking direct communications to the District.) Many people have submitted comments or asked questions and never have gotten a response or any indication that their communication was considered by anyone. It is unfortunate that EPA now appears to doing the same thing.

Since last fall, PEER has submitted numerous comments, presented critiques and sent detailed letters about the teachers' concerns. At this point, let me add the following to what we have already stated in writing:

The District has repeatedly publicly stated that they have no expertise in health or environmental matters and that they are relying entirely on the guidance, recommendations and requirements of EPA concerning PCBs. (I can send you many documents where they have said that if you want). The District is already publicly committed to doing whatever EPA recommends. There is no need to negotiate. EPA should publicly recommend what complies with the letter and spirit of TSCA and its implementing regulations and is most protective of the health and safety of teachers and students at the Malibu Schools, and the District will follow those recommendations. It really has no choice given the stance it has taken. It is only in closed door negotiations that the District would be able to reject any EPA recommendation. EPA should not allow this to happen.

This is true regardless of whether EPA 's recommendations are for actions that are legally required by TSCA and its regulations or not. I am aware that TSCA outlaws PCBs in building materials at 50 ppm or above, but does not require testing to see if caulk or other materials are at illegal levels. However, the law does not require testing the air or dust either, and this School District, as well as others, do it because that is what EPA recommends.

EPA could just as easily recommend testing all the caulk and other possibly contaminated building materials in all pre-1980 buildings, and removing all caulk and remediating all materials at or above 50 ppm or which is "PCB Contaminated" per the regulations. This is the only way to insure that there will not be continued exposure, and the only thing that is consistent with both the letter and spirit of TSCA and the regulations.

By doing only air and dust testing, EPA seems to be engaged in a public health ruse in order to avoid ever documenting a regulatory violation and thus never being legally required to do anything. Not requiring testing the caulk and other

materials in Malibu -- where regulatory exceedances, some of them very large (well over 300,000 ppm) have been found -- is truly an end run around the law. Everyone knows there are likely to be many more rooms in the same buildings, very likely built using the same caulk, that have legal exceedances.

Not testing the caulk can only be seen as a way to evade the law. EPA should not condone or facilitate this end run around the law, and I can tell you that PEER and others are considering legal action if you do, and certainly if you do not require prompt removal of caulk already found to exceed legal limits and testing and remediation of related materials which may have been contaminated.

I also understand that EPA is taking the position that there is likely not to be a health risk even with illegal levels of PCBs in caulk or other materials unless there are levels above your health benchmarks in the air or dust. While the no exposure/no health problem stance may appear superficially logical, there are many problems with this position and I won't try and go into all of them here. The most important and obvious is that it is contrary to the law Congress passed in TSCA and the regulations EPA promulgated to implement it. Congress found that based on the scientific evidence even back in 1976 (and it has become much stronger since), PCBs are so dangerous, and so likely to enter the environment, that everything except totally enclosed uses had to be banned. Absolutely. Completely. Nothing about only if air and wipe tests exceeded certain levels.

While EPA does have the authority to make exceptions by rulemaking if it can justify a finding that certain uses "will not present an unreasonable risk of injury to health or the environment," EPA has not done so in any regulation that would apply here. In fact, EPA has done exactly the opposite, finding in its regulation at 40 C.F.R. 761.20 that "based upon the well-documented human health and environmental hazard of PCB exposure, the high probability of human and environmental exposure to PCBs ... and the evidence that contamination of the environment by PCBs is spread far beyond the areas where they are used" that "PCBs at concentrations of 50 ppm or greater and PCB items with PCB concentrations of 50 ppm or greater present an unreasonable risk of injury to health within the United States." The regulation prohibits the use of any material with concentrations of 50 ppm or greater, including in existing materials, no exceptions. A conclusion that PCBs at 50 ppm or more do not pose unreasonable risks unless air or wipe sample are at certain levels is cannot be reconciled with the findings in EPA's own regulations.

In addition, as a practical matter, air and wipe samples cannot assure safety or even the avoidance of unreasonable risk. Test results change with different conditions including weather, ventilation, types of uses of the rooms, cleaning and maintenance, deterioration of the caulk over time, etc. To insure safety, samples would need to be taken at regular intervals, and best management practices would have to be implemented, as long as the caulk is in place. The cost over time could be even greater than testing and removing the caulk.

Moreover, the health guidelines which look only at dust and air do not take other exposure routes into account -- such as children touching caulk or other building materials contaminated by the caulk and putting their hands into their mouths, exposures from outside soil to which the PCBs have migrated or which contain PCBs from other sources, etc. Basically you are keeping people, including small children, in a potentially dangerous environment which requires eternal vigilance in the form of testing, cleaning, avoiding contact, hand washing, not disturbing sources, and so on, which, given human nature, is not assured to occur.

And that assumes that these measures would actually remove the health risks, which is also questionable. The health guidelines being used here have no legal status and do not take many things into account. For example, the guidelines are based on the age of the children, but do not take into account the possibility of fetal exposure for pregnant teachers, which would require a far more protective standard. Their imprecision is evidenced by the fact that supposedly the day after a child's 6th birthday, she or he can safely be exposed to twice the amount of PCBs in the air, regardless of the particular child's size or other characteristics.

In addition, as I understand it, EPA has not integrated endocrine disruption, a known effect of PCBs, into its risk assessments. Risk assessments also may not be protective for individuals with special genetic or other susceptibilities. I don't want to get into a debate about risk assessment, but I think everyone can agree that it is not an exact science and

that only actually removing the sources of the PCBs, as the law requires, can assure that the threat of PCB health impacts is removed.

I ask that these comments be conveyed to the appropriate people with decision-making authority and that they acknowledge receipt and provide a response. Thank you.

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From: Wedell, Kelly [<mailto:Wedell.Kelly@epa.gov>]
Sent: Monday, August 11, 2014 7:18 PM
To: Paula Dinerstein
Subject: RE: Malibu schools request

Hi Paula-

I received your voicemail message and am sorry I missed you due to the time change. Just to clarify, we would like any input you have in written form so it can be shared with the appropriate staff. I apologize that this was not clear in my initial response.

Thanks!

Kelly

Kelly Wedell
Project Officer
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US EPA Region 9

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From: Wedell, Kelly
Sent: Monday, August 11, 2014 12:37 PM
To: 'Paula Dinerstein'
Subject: Malibu schools request

Dear Paula-

Thank you for your email to Regional Administrator Jared Blumenfeld. For future reference, I will now be serving as the liaison for community input and questions on all issues related to PCBs at Juan Cabrillo Elementary, Malibu Middle School and Malibu High School.

Jared is unable to speak with you at this time. If you have information you would like us to consider, please forward that information to me.

Best,

Kelly

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From: Paula Dinerstein <pdinerstein@peer.org>
Sent: Monday, August 11, 2014 7:23:54 AM
To: Blumenfeld, Jared
Subject: Malibu schools request

Mr. Blumenfeld: as you know PEER has been advocating on behalf of a group of teachers at Middle and High School and Juan Cabrillo Elementary School. I have heard that you are negotiating some sort of agreement about PCB testing and cleanup with the School District. I would like just a few minutes of your time to give you some brief input into this. Could we have a short telephone conversation?

Thank you.

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